

Message Text

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ACTION EB-07

INFO OCT-01 ARA-06 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

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FM AMEMBASSY LIMA

TO SECSTATE WASHDC PRIORITY 2886

AMEMBASSY PANAMA PRIORITY

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PANAMA FOR STYLES

E.O. 11652: N/A

TAGS: EAIR, PE

SUBJECT: CIVAIR CONSULTATIONS - PERU

REF: LIMA 9710

1. ON FRIDAY, NOVEMBER 22, DGTA BERCKEMEYER TELEPHONED TO COMPLAIN THAT BRANIFF'S APPLICATION TO EXTEND 45-DAY DEAD-LINE UNTIL JANUARY 31 (PARAGRAPH 2C REFTL) WAS COMPLETELY UNACCEPTABLE TO TRANSPORT MINISTRY. HE COMPLAINED THAT IN ADDITION TO EXTENSION, BRANIFF APPLICATION HAD ALSO SOUGHT: (A) NULLIFICATION OF SUPREME DECREE EMBODYING OPERATING PERMIT; AND (B) CONTINUATION OF STATUS QUO AS FAR AS BRANIFF OPERATIONS WERE CONCERNED PENDING FURTHER CONSULTATIONS. THESE TWO POINTS, HE SAID, WERE INCONSISTENT WITH UNDERSTANDING HE BELIEVED TO HAVE BEEN REACHED BETWEEN TWO DELEGATIONS.

2. AT BERCKEMEYER'S REQUEST, EMBASSY OFFICER DISCUSSED MATTER WITH DEL SOLAR, WHO EXPLAINED THAT REASON FOR PRESENTING APPLICATION IN THIS MANNER WAS TO MAKE IT CLEAR THAT BY APPLYING FOR EXTENSION BRANIFF WAS NOT THEREBY TACITLY AGREEING THAT OTHER PROVISIONS OF OPERATING

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PERMIT WERE ACCEPTABLE. HOWEVER, HE RECOGNIZED PROBLEM

AND SAID HE WOULD CONSULT HIS PRINCIPALS.

3. EMBASSY OFFICER TELEPHONED BERCKEMEYER ON NOV 25 TO TELL HIM BRANIFF WAS STUDYING HIS COMPLAINT. BERCKEMEYER REPEATED HIS UNHAPPINESS WITH BRANIFF AND MADE FOLLOWING ADDITIONAL POINTS:

(A) BRANIFF HAS BEEN DISREGARDING PERUVIAN LAW BY OPERATING WITHOUT A PERMIT SINCE MARCH 1;

(B) BRANIFF REQUEST THAT SUPREME DECREE BE NULLIFIED CONSTITUTES FURTHER DISREGARD OF LAW;

(C) PERU MERELY SEEKS TO RECOVER FROM AEROPEUR SOME OF THE BENEFITS PREVIOUSLY GRANTED BRANIFF--IT DOES NOT SEEK TO DAMAGE BRANIFF ANY MORE THAN NECESSARY IN THE PROCESS; AND

(D) HE DOES NOT WISH TO RETALIATE AGAINST BRANIFF, BUT BRANIFF IS MAKING IT DIFFICULT FOR HIM NOT TO DO SO. BERCKEMEYER CONTINUED THAT HE KNEW THAT BRANIFF HAD WORDED ITS APPEAL AS IT DID IN ORDER TO AVOID THE INFERENCE THAT IT OTHERWISE ACCEPTED THE PERMIT. THIS WAS REDICULOUS SINCE U.S. NEGOTIATIONS HAD OBVIOUSLY ACCEPTED VALIDITY OF PERMIT AND BRANIFF COULD HARDLY DO OTHER WISE. EMBASSY OFFICER REPLIED THAT WHOLE MATTER APPEARED TO INVOLVE LEGAL INTERPRETATIONS ON WHICH HE WAS NOT COMPETENT TO COMMENT.

4. EMBASSY OFFICER ALSO TOLD BERCKEMEYER THAT BRANIFF COULD NOT MEET WITH AEROPERU UNTIL DECEMBER 4. BERCKEMEYER WAS DISTRESSED AND ASKED IF REPRESENTATIVES OF BRANIFF AND AEROPERU COULD NOT MEET EARLIER SIMPLY TO TABLE RESPECTIVE POSITIONS WHICH COULD THEN BE STUDIED AND DISCUSSED ON DECEMBER 4.

5. COMMENT: WOULD APPRECIATE USDEL/DEPARTMENT COMMENTS ON FOREGOING, IN PARTIUCULAR WHAT SPECIFIC RESPONSE, IF ANY, WE SHOULD MAKE TO BERCKEMEYER ASSERTION THAT USDEL HAD ACCEPTED VALIDITY OF BRANIFF OPERATING PERMIT.

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